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Degree of Master of International Studies
(International Area Studies)

**A Study on the Law on Associations and Non-
Governmental Organizations in Cambodia:
Prospect and Retrospect on Empowering Civil Society**

August, 2017

Development Cooperation Policy Program
Graduate School of International Studies
Seoul National University

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**A Study on the Law on Associations and
Non-Governmental Organizations in
Cambodia:
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Civil Society**

A thesis presented

by

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A dissertation submitted in partial fulfillment
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Abstract

A Study on the Law on Associations and Non-Governmental Organizations in Cambodia: Prospect and Retrospect on Empowering Civil Society

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The growing political significance of civil society in Cambodia continues to interest many with the recent promulgation of the Law on Associations and Non-Governmental Organizations (LANGO), expecting rightly or wrongly more of negative impacts. However, this study delves in-depth on the positive effects of the enabling national legislation to civil society organizations (CSOs) as well as its effects on the structure, power and reach of the state as the sector is influenced rather heavily by the state. Thus, the aim of this paper is to comprehensively investigate how the LANGO can positively strengthen civil society groups in Cambodia, assessing in full the rationales behind its formulation amidst global, regional and domestic social, economic and political factors that influence the role of civil society in general.

Indeed, the incumbent comprehension of civil society has become more sophisticated as different theories have been developed for its conceptual

framework. More importantly, it is theorized that “the strength of civil society is quantified by the peaceful coexistence of social units as well as by their collective capacity to simultaneously resist subordination to the state and demand inclusion into national political structures.”

In Cambodia, civil society is considered more as processes rather than enduring organizational structures and as continuously living and changing forms. The overall enabled role of civil society with the LANGO, so to state, is envisioned to bring about positive political change in several ways and basically leading towards open, accountable and participatory politics and the due importance of conceptualizing associations and non-governmental organizations in the country both as an arena of governance and a firm force for change in political society and the state.

Keywords: LANGO

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List of Abbreviation

LANGO	:	Law on associations and Non-Governmental Organizations
CSO	:	Civil Society Organization
UN	:	United Nations
SG	:	Secretary General
UNTAC	:	United Nations Transitional Authority in Cambodia
CBO	:	Community-based organization
FSSIR	:	Faculty of Social Sciences and International Relations
ASEAN	:	Association of Southeast Asian Nations
CCC	:	Cooperation Committee for Cambodia
INGO	:	International non-governmental organization
CRDB	:	Cambodia Rehabilitation and Development Board
CDC	:	Council for the Development of Cambodia
ODA	:	Official Development assistance
NSDP	:	National Strategic Development Plan
ADB	:	Asian Development Bank
MDG	:	Millennium Development Goals
ADA	:	Asian Development Alliance
PVO	:	Private voluntary organization
GPP	:	Governance and Professional Practice
CNSN	:	Cambodian NGO Support Network
NEP	:	NGO Education Partnership
MIS	:	Management information system

Chapter I

Introduction

In many ways, the Kingdom of Cambodia or Cambodia in short, is a unique haven for civil society organizations (CSOs). Considered as a low income country under stress (LICUS) and one of the impoverished countries in Asia as a consequence of nearly two decades of social and political turmoil, the country globalized herself to what we called the liberal world assisted by the United Nations Transitional Authority in Cambodia (UNTAC) from 1992 to 1993. There were huge amount of money, which were around US\$ 1.6 billion, have been used for this transitional process. Those moneys were administered by CSOs, many of which stayed in Cambodia after the disbandment of the UNTAC and gradually the peace and prosperity have flourished in the country again¹. Since then, both domestic and foreign CSOs, which operating in the country, have dramatically increased due to minimal regulations for establishment and huge amount of aid and development funding².

Indeed, in these years with relaxed regulatory environment, the country was noted to has been swollen by NGOs with significant funding accessible from development partners and international non-governmental organizations (INGOs). In response, the Royal Government of Cambodia has undertaken a very significant effort to put more restrictions and requirements on the CSO sector in the past years. The result can be seen with the proposed drafts on the “Law on Associations and Non-Governmental Organization” (LANGO) together with CSOs representatives arguing against the passage of the national legislation and, rationalizing that it would hinder the potential of CSOs to handle their work independently, particularly in the political sensitive issues, which could be handicapped or restricted by the elements of the LANGO.

¹Cooperation Committee for Cambodia (CCC), op.cit., p 12..

²*Ibid.*

However, in April 2015, the Prime Minister of Cambodia, His Excellency Samdech Hun Sen, has argued that the important piece of legislation would actually strengthen transparency of NGO funding sources, as it would curtail resources from terrorist groups from accessing the country³. Importantly, while the LANGO could be used as preventive policy to tackle the problem of “out-law” practice by organizations, it also “handcuffs” those who failed to comply⁴. There is no freedom without the law. At the same time, there should be no law if it is used to hinder the freedom of people. It is not the trade off between the two but the complimentary to one another. While the need for a clear legal framework by civil society groups to protect peace and stability, to ensure as well as to enable their role in the field of service delivery and advocacy in the country has been increased, that framework would have no choice but to render citizen’s freedom to participate in law-abiding activities with no harmful to their right of freedoms and expression. Therefore, that it is crucial that the law has to strengthen the pro-active and enabling role of civil society groups in proper context in accordance to international standard. Eventually, in August 2015, the Royal Government of Cambodia has passed this “Law on Associations and Non-Governmental Organizations”, with the main purpose to empower while at the same time strengthening CSO’s role in promoting stability and development in the country.

At this juncture, it becomes contingent to weave out a conceptual framework on how specifically this controversial national legislation, the LANGO, can empower legitimate civil society organizations in whatever their typology in Cambodia. Basically, this is line to appropriately respond to the thesis objective vis-à-vis in probing the conception of civil society within Cambodia social and political dynamics. Part of the conceptual framework task is to periscope and review swiftly the post conflict rehabilitation of the country as an essential predicate for its overall development with the engagement of civil society groups. Needless to mention, this

³Laura Southgate, Will New NGO Law Curtail Foreign Investments.? July 04, 2015, as culled electronically, p.1

⁴*Ibid*

task takes into great consideration the local pathways for development including economic, social and political development, which civil society has been assisted. Hence, when the LANGO was conceptualized, developed and finally packaged, the ingredients of what form civil society have been laid down, to include likewise the organizations' performance, behavior, outcomes and impact in society with government's regulatory mechanisms.

The fundamental characteristics of civil society organizations are brought up both prospectively and retrospectively. Consequently, the old and new historical phenomena on civil society are stated. A critical perusal on the mechanics of enhancing civil society organizations' accountability and good governance relative to registration and establishment, financial regulation and transparency, political non-partisanship as well as dissolution and suspension are thoroughly expounded. A great bulk of the valuable conceptual framework inputs are garnered from certain relevant Southeast Asian civil society research studies and analyses that have been carefully scrutinized and mentioned in the Literature Review.

a. Research Objectives

This thesis paper is composed with the main purpose is to comprehensively investigate how the Law on Associations and Non-Governmental Organizations (LANGO) can positively strengthen civil society groups in Cambodia despite apprehensions, doubts and uncertainties being raised about its implementation by certain cause-oriented NGOs and associations.

To wit are its specific objectives, as follows:

1. To know in-depth the rationale(s) for the enactment of the LANGO vis-à-vis global, regional and domestic social, economic and political factors

which influence the role of civil society groups in a weak state like Cambodia;

2. To identify essential mechanisms stipulated in the LANGO's articles which will strengthen sustainably NGOs and Associations and how these are operationalized for improved collaboration with the government so as to achieve civil society's mandate;
3. To explore in-depth the LANGO's feasible weaknesses and threats affecting the pro-active role of civil society in Cambodia and how these weaknesses be transformed into strengths and threats into opportunities as critical political challenges for the state.

b. Research Questions

With the main objective, which has holistically mentioned above, this paper seeks to answer the following questions, namely:

1. What is the Royal Government of Cambodia's major purpose(s) in enacting the LANGO as well as how wills its effective execution not curtail civil society's constitutional rights?
2. What are the key benefits and outcomes that civil society groups in Cambodia garner from the LANGO relative to its strengthening to advance democratic principles?
3. What factors hinder the LANGO implementation, which will practically disable civil society?
4. What are the important political challenges and opportunities by the state to guarantee enabling of civil society groups for long-term basis?

c. Research Methodology

The research study is conducted in the qualitative method with two main mechanisms. Firstly, it performed informal interviews with Mr. Vey Channarith, who is a key officer which working closely in implementation of the LANGO at the Ministry of Foreign Affairs and International Cooperation as well as with Prof. Dr. Fil B. Tabayoyong, Jr., a university professor of Pannasatra University of Cambodia's (PUC) Faculty of Social Sciences and International Relations (FSSIR), who has been engaged in NGO development work for more than three decades in different countries in the Asia-Pacific Region as well as represented the Republic of the Philippines in Civil Society Forum during the Association of Southeast Asian Nations (ASEAN) Summit in year 2012. Secondly, the official publication of the LANGO by the Royal Government of Cambodia for the public usage has served as the primary source of document in coming out with critical analyses of the explored topic of the research study following by a number of literatures review as a secondary document for this thesis.

Chapter II

Literature Review

There exists a wealth of literature, dwelling on enormous aspects of civil society, which has been accorded certain meanings in different historical contexts by political thinkers, analysts and theorists. In the book, *Civil Society: History and Possibilities*, published in year 2000 by Cambridge University Press, editor Sunil Khilnani, pinpointed that in the history there has been intertwined in the notion of civil society with theoretical constructs, like “market economy, citizenship, sociability, liberalism, civility, social cohesion.” It was likewise hypothesized by the same source that that the term connoted the antonym for “despotism and barbarism as well as community or state.” H. Islamoglu’s *Concept and History of Civil Society*, culled from *International Encyclopedia of the Social and Behavioral Sciences*, volume 3, year 2001, highlighted civil society as “a civilized political community” which consist of institutions, individuals and groups who always struggle to balance the power amidst them. During the 17th century, two English social contractualists, named Thomas Hobbes and John Locke propositioned their concept of civil society in their respective works. The former, in his *De Cive* (1651) and *Leviathan* (1660), expressed that civil society was a “sphere of collective public life and of self-interest,” and thus, recognizing a “sphere of self-interested activity with which the state should not interfere.” In a nutshell, Thomas Hobbes’ civil society could be deciphered as “politically organized,” which is constituted and held together by the state. This can be elaborate that civil society cannot exist in the absence of state power, in other word.

On another tier, *Two Treatises of Government* (1689), which developed by John Lock, saw the state and civil society were exchangeable, civil society could be “an alternative to the state of nature,” which is a “legitimate political order.” Hence, worthwhile to note is that in Locke’s mind the “civil society was less in relation to market but more in political terms.” However, he did not delineate civil society and

political society, such that he referred civil society with the state. Despite its Western coating, the term civil society has entered Asian political framework and analysis in a rather peculiar way. Certainly, there are wide variations in civil society's comprehension as well as in the attitude of government and key political leaders to civil society organizations. Collectively, taking into great account such organizations as a positive force in the furtherance of democracy, some governments have set in motion rules and rights to enable the development of a sphere of organization and governance that is independent of the state. Moreover, in Mutiah Alagappa's thinking in his Introductory Critical Essay on Ou Sivhouch's "Sub-National Civil Society in Cambodia," October 2013, "non-state organizations can be a cause of instability and an obstacle to their visions and policies" so that governments seek to suppress if not eliminate the role of these organizations. In addition, it is stated that "other governments venture, seeking to limit, penetrate, co-opt, control and manipulate civil society organizations for their own benefit." Samuel Huntington in his book, entitled "The Third Wave: Democratization in the Late Twentieth Century," by University of Oklahoma Press, 1991, rationalized the significance of civil society as "a political force, gaining worldwide prominence beginning in the 1980s apropos fundamental global geopolitical and economic alterations and in wake of numerous transitions all over the world from authoritarian and communist regimes to democracy."

There are relevant intensive research studies on legitimate civil societies in some Southeast Asian countries, providing good backgrounders relative to the conduct of constructing this paper and, to document in passing: "Indonesia: Transformation of Civil Society and Democratic Breakthrough" by Edward Aspinall; "The Philippines: Fractious Civil Society and Competing Visions of Democracy" by Jennifer C. Franco; "Malaysia: Construction of Counterhegemonic Narratives and Agendas on Civil Society" by Merdith L. Weiss; and "Burma: Civil Society Skirting Regime Rules" by KyawYin Hlaing. The gist of these in-depth appraisal studies purports to demonstrate the empowering role of civil society organizations under different political situations in

negotiating democratic spaces for the interest of people's common good in contradistinction to the continued influence of the traditional elite political society on civil society as well as the still limited weight of strategic coalitions within civil society organized around social reform.

In the "Emerging Non-Profit Sector: An Overview," authored by Lester M. Salamon and Hemmut K. Anheier, published by Manchester University Press in 1996, several factors were elaborated to explain the growth of civil societies in Asian countries, to include Cambodia in the Mekong Sub-Region, viz: "anti-colonial mobilization, weakness of states, resistance to repressive rule, government sponsorship of organizations, increase in democratic space, economic growth and development, the information and communication revolutions, change in the international normative structure and growing international support." Quite remarkably, the projections of these elements vary by country over a period of time, stressing on the theme that the development of civil society depends on the social reality, as for instance in Cambodia.

I.Laundau, in his article, "Law And Civil Society in Cambodia and Vietnam," as articulated in the *Journal of Contemporary Asia* (32, 2), 2008, laterally analyzed Cambodian national civil society's limitations in terms of the "state as being not monolithic" inasmuch as civil society also collaborate well with some state agencies. It can well be noticed that in Cambodia some government bureaucratic entities at separate locations and in separate level impart to non-governmental organizations and associations differently. Thus, the connection among these two actors, state and civil society, is truly indispensable and inevitable, as pointed out by F. Quadir and J. Lesle in a book they edited, entitled *Democracy and Civil Society in Asia*, published in 2004 by Palgrave Macmillan UK.

Chapter III

Theoretical Framework

The reinstitution of “the state” to be the core player in this capitalist world as well as the new desire to deal with community norms as “social capital” both compelled a widening of the developmental framework, however, these two motions were not strongly integrated. The state’s theorist as a developmental actor did not well demonstrated the role of social capital, while the social capital’s theorist usually viewed the state as the offender to the development of community. The states with its government institutions are basically different from one another across different parts of the world, thus also lead to form the viable structures of state-society relations. The nature of this relationship is, nevertheless, not clear than it may appear. There are several competing perspectives to explain on what kind of government institution, which can avoid this “zero-sum” relation between society and state while constructing “the win-win” relations between these two actors.

One emerging theory in the development paradigm to construct this win-win relation can be found in the idea of “synergy”, which has developed by Putnam (Putnam, 1993b: 42). This idea has strongly indicated that civic engagement enhances state institutions, while constructive state institutions generate friendly environment for civic engagement to flourish (*ibid*). In this regard, Putnam and Nugent have pinpointed in their “synergy hypothesis” that---

“there is evident that the existence of the state and the rules it establishes and enforces can strengthen and increase the efficiency of LOIs (local organizations and institutions) and that, at least in coalition with other urban based groups, LOIs can give rise to collective action increasing the power of the states” (Putnam, Nugent, 1993:629).

These activities of government agencies enable shaping norms of networks and trust amidst individual citizen and utilize them to develop civic engagement. Likewise, engaged citizens can be considered as the public project assistance in sharing source of information on the implementation of those projects. This strong incorporation between public institutions and civic engagement is a very powerful tool to develop a country.

To understand more clearly this idea of “state-society synergy”, we should clarify the two main interpretations of this synergy: complementarity and embeddedness, as elaborated by Evans (1997:187). Complementarity can be defined in a traditional way as mutually supportive relations between public and private actors (*ibid*). This can be illustrated with an example that the task of governments is to deliver particular type of collective goods, while private actors are suited to put effective complementary. Combining these two inputs together produce considerable results greater than each of them could produce on their own. This clearly shows that complementarity is the division of labor between the government agencies and the citizens. However, this achievement would not be possible without the “rule of law”, which relies solely on the effective government institutions. Likewise, as pinpointed by Nugent (1993), helpful governments contribute rule-governed environments, which contribute to strengthening and increasing efficiency of local organizations and institutions. Meanwhile, the possibility in which synergy can be constructed on “embeddedness” is on ties that connect citizens and public officials across the public-private divide (Evans, 1997:187). There is case-to-case basis in which which type of synergy is created. Some cases may be created solely base on the complementarity, while some cases are created through the combination of the two.

In this regard, one essential question should be asked in which how does synergy between the state and society can be created? This question can be answered with two conditions. The first condition is within the idea of “endowments”, while the

second condition relies on the notion of “constructability” (Evans, 1997:196). Endowments of social capital play the most critical role in the development of synergy. At the same time, this condition to create synergy also consumes a lot of inputs. Its prerequisites need not only for a well-organized civil society, which can be required for long period of time to develop, but also well-organized public institutions, which provide a friendly environment to develop effective civic engagement (*ibid*). This friendly environment can only be feasible with governments that supporting decentralization and openness in term of distributing of power to local self-organization. These perquisites are obviously critical in the development of a very coherent relations between the state and society, thus provide a supportive carapace for the self-organization of civil society groups. In different point of view, the idea of constructability looks to different paradigm of synergy development. It focuses more on the people’s perceptions in building social structures. This can be elaborate that, “social identities are constructed and reconstructed on a regular basis and can be reconstructed in ways that enhance prospects for synergy” (Evans, 1997:209).

Chapter IV

The Development of Civil Society in Cambodia

The historical development of the term civil society, which has consolidated itself to be a part of the modern political vocabulary, has been developed from time to time, acquiring different meaning and explanation in different time period of history. Its origin can be traced from the Greek idea of “*koinonia politika*,” meaning political community, employed by the ancient Greek philosopher, Aristotle, who pinpointed it as the interaction of different people in different status of live in the different social spheres⁵. In his research study, entitled, “In Search of Civil Society,” Sudipta Kaviraj explains three main connotations in which the notion of civil society has been applied. These three explanations have been explained in a contradiction to one another in which can be understood as dichotomies idea, herein defined as:

“through its objection to natural society or state of nature in early contemporary contract theory, such as in Thomas Hobbes/ and John Locke’s use; against the state in the entire liberal tradition, and contrasted to the community (*Gemeinschaft* by Ferdinand Toennies) in a theoretical tradition of contemporary sociology⁶.”

To contextualize, nowadays, civil society organizations (CSOs) can be defined as those organizations, which lay outside the realm of privates, family, and government and continue to work for the well-being of other group of people or seek to extend their non-profit agenda for the common good⁷.

⁵Anjur Tanvir, historical Trajectory of the Development of the Concept of Civil Society in Europe, *Journal of Political Studies*, Vol 1, Issue 2, 2001 p 148.

⁶Sudipta kaviraj, *In Search of Civil Society*, as contained in Anjur Tnvir, *Ibid.*, p 157.

⁷Cooperation Committee for Cambodia (CCC), *CSO Contributions to the Development of Cambodia-2012*, (Phnom Penh: CCC), May 2003, p 1.

It has to be pointed out that for Southeast Asia, especially Cambodia and the other Mekong sub-region countries, civil society is considered more as processes rather than enduring organizational structures and as continuously living and changing forms. In this fashion, civil society is an avenue wherein people interact freely with one another in the form of diverse organizations, actions, and activities in the aim to proceed their interests or agenda. In terms, therefore, of organizations, NGOs or private voluntary organizations (PVOs) play central role in civil society. As expounded by Gerard Clarke in his book, “The Politics of NGOs in Southeast Asia,” NGOs can be defined as those organizations that work privately and professionally with the goal for public interest without profit for themselves and structure with its own unique legal character⁸. They primarily exist as means or agents of civil society. In addition, the term NGO is broadly referred to as a separate kind of group of people or agency that is neither a state nor a business while they are not attempting for a profit either⁹. Likewise, in Cambodia, associations are formed as component part of civil society and are historically and socially rooted, emerging from desires, interests, needs, and commitments of local people. In this regard with the context of Cambodia, the Ministry of Interior (MoI) deems CSOs who are serving society as NGOs and CSOs who are serving only their members as associations (USAID, 2014).

In Cambodia, historically, the civil society has emerged after the Paris Peace Accords, which were forged on October 23, 1991 marked the official termination of the Cambodian-Vietnamese War and likewise set the Framework for a Comprehensive Political Settlement of the Cambodia conflict¹⁰. The agreements were chartered by Cambodia together with eighteen other nations in the presence of the United Nations (UN) Secretary General (SG), spelling out foremost a transitional period prior to the creation of a new Khmer government. This mission of the United Nations Transitional Authority in Cambodia (UNTAC) was armed with peacekeeping soldiers and civilian

⁸Gerard Clarke, *The Politics of NGOs in Southeast Asia*, (London: Routledge), 1998, p 2.

⁹Jem Bendell, *Debating NGO Accountability*, UN Non-Governmental Liaison (NGLS), 2006, p. x

¹⁰Cambodia Information Center, < www.cambodia.org/facts/1991/Paris/Agreements>

under direct supervision of the United Nations Secretary General¹¹. During the UNTACs involvement covering the period from March 01, 1992 to September 01, 1993, it was mainly focus on the enhancing and expanding civil society to every important part of the country as a critical objective of peace-building mission together with other important global agenda at that time¹². As properly articulated by C. Hughes, the UNTAC has proclaimed that the enhancing of the civil society in Cambodia plays the uttermost crucial assurance against the reversion of state suppression in the past¹³. And this also mentioned in the Cambodian constitution 1993¹⁴, which is one of the main outcomes of the Paris Peace Agreement at that time, that “every citizen of Cambodia has the freedom of press, expression, assembly and publication. More than this, according to the Article 42 of the Constitution, Cambodian citizens are provided with the right to institute their own political party and associations” (Ingrid Landau, 2008).

Evidently, for a period of eighteen months of the UNTAC’s operations in the country, the missions was hugely supported by the donor countries at large in which mainly focus on facilitating the role of civil society organizations. That was also the time when a dynamic and vibrant civil society was envisioned in which donor community provided huge supplies of finances for the upsurge of local non-governmental organizations (NGOs); however, many of which were considered as “money-chasing” service organizations as there was insufficient amount of human

¹¹Sivhuoch Ou and Sedara Kim, Twenty Years of Cambodian Civil Society: Time for reflection, Working Paper Series No. 85, Phnom Penh: CDRI, October 2013

¹²Ibid

¹³C.Hughes, The Political Economy of Cambodia’s Transition, 1992-2001, (London: Routledge), 2003, p. 138.

¹⁴ The development of this constitution formed part of the 1991 Paris Peace Agreement. This Paris Peace Agreement played a very crucial role in establishing the United Nations Transitional Authority in Cambodia (UNTAC), which was assigned with the task to monitoring and assisting Cambodia “transition to democracy” (Ingrid Landau, 2008).

resources for that sector at that time at a time¹⁵. At the same time, they also have earned public recognition in the public sphere for their promotion of democratic entitlements and are, ever since economic and political liberalization. With this huge contribution, they have earned very strong relations and trust with local communities through their activities in this past decades (USAID, 2014). Without debate, Cambodia in the early 1990s was aptly described as having one of the highest absorption of NGOs¹⁶. Since then, they have participated in almost all features of public policy and Cambodian society as an indispensable agent in the recuperation of the country from more than twenty years of civil war and isolation to the era of growth and development. They are working both directly and indirectly with all government entities and in all regions to make sure that every Cambodian citizen benefit from the development of the country¹⁷. In several sectors of development, CSOs have played as the essential service and information delivery to boost the quality of lives of the people. Also, it needs to be as well highlighted that civil society in Cambodia has an essential socialization function which applies across the board, meaning to say that the function encompasses the roles that relate to citizens' capabilities and abilities to communicate in which it is the crucial elements to develop citizen's capacity for independent discernment and association in developing democratic society in the country as well as those that relate to the virtues of trust, reciprocity and recognition, which can serve as foundation for the robustness of the public sphere and democratic institutions of a community¹⁸. This job of civil society is to bring about the change in political sector as well as shaping up the way of people think in several ways but basically leading towards the direction of open, accountable and participatory politics and the importance of conceptualizing civil society both as the sphere of governance as well as a force in changing political

¹⁵ J. Ojendal, *In search of Civil Society: Re-Negotiating State-Society Relations in Cambodia*, as incorporated in G.Aaibel, et al (eds), *Southeast Asia and the Civil Society Gaze*, (London: Routledge), 2013.

¹⁶ C. Hughes, loc. cit., p 138.

¹⁷ Cooperation Committee for Cambodia (CCC), *CSO Contributions to the Development of Cambodia-2012*, (Phnom Penh: CCC), May 2003, p 1.

¹⁸ Muthiah Alagappa, *Civil Society and Political Change*, as culled from IS310-Civil Society, 2014, p 52, p 54.

society and the state¹⁹. These roles that belong to the socialization function have been singled out by Larry Diamond in his book, “Developing Democracy: Toward Consolidation,” as follows: stimulating political skills and participation; education for democracy; development of cross-cutting identities; dissemination of information to empower citizens; and those that relate to the creation of civic virtues²⁰. With all these such contributions, according to the Development Cooperation and Partnership Strategy 2014-2018, the Royal Government of Cambodia recognizes the significant contribution of NGOs and considers as partnerships for effective service delivery (CDC:CRDB, 2014).

A number of opportunities has been provided to CSOs to involve in crucial policies in both sub-national and national development plan with strong support from Cambodia national government. Notably, during the past two years, CSOs have actively involved in constructing the National Strategic Development Plan (NSDP) for 2014-2018, considered to be the highest strategy paper produced by the government, identifying development plans and public policy in every five years²¹. The main donor countries for development, like the International Monetary Fund (IMF), the Asian Development Bank (ADB) and the World Bank (WB) have also aligned their strategies with the NSDP²². Regionally and internationally, many civil society activities have focused on two main areas, which were the implementation of the Istanbul Principles initiated and disseminated in 2011, and preparations for the end of the Millennium Development Goals (MDGs) in 2015²³. To tackle above-mentioned objectives, the Asian Development Alliance (ADA) was established in 2013, which issued the

¹⁹Interview with Prof. Dr. Fil B. Tabayoyong, Jr., 10 August, 2016.

²⁰Larry Diamond, *Developing Democracy: Toward Consolidation*, (Baltimore: Johns Hopkins University Press), 1999, as contained in M. Alagappa, *Ibid.*, p 54

²¹ CSO joint statement on the formation of the National Strategic Development Plan (NSDP) 2014-2018, < http://www.ccc-cambodia.org/downloads/pressrelease/CSONGOStatement_on%20NSDP2014-2018_EN_FINAL.pdf>

²²*Ibid.* p 13.

²³*Ibid.*

Bangkok Declaration²⁴. ADA is considered as a NGO umbrella that deals with both collaboration and networking while enhancing communication with its members in the region. Via the Bangkok Declaration, ADA has asserted its most important objective of assisting CSO's effective role through capacity building and advocacy, particularly by playing as a focal point in Asia for the implementation of the Istanbul Principles and the Siem Reap Consensus for CSO Development Effectiveness as civil society works in partnership with the government²⁵. In this regard, in the late 2012, the "Development Cooperation Trends in Cambodia and Proposals for Future Monitoring of the Development Partnership Report" by the Cambodian Rehabilitation and Development Board of the Council for the Development of Cambodia (CRDB/CDC) was issued, highlighting the projected spending of development NGO collaborators as well as identifying the need to incorporate CSOs support to the national and international protocols²⁶. To add, there were changing tendencies in the development plans of the development assistances in the country by shifting their focus to other areas of development, particularly from the health sector, which was considered to be the largest sector to receive support from official development assistance (ODA) in the past, to focus more on transportation, partly as a consequence to a large increase of assistance from People's Republic of China²⁷. Needless to state, this is the last document before CRDB/CDC begins drafting of the Development Cooperation and Partnerships Strategy for 2014-2018²⁸.

The emergence of this important role of CSOs would not be possible without the help by donor countries. Without doubt, donor's countries have contributed a lot of resources and played a major partner in development process of Cambodia through

²⁴ Asia Development Alliance (ADA), ADA Bangkok Declaration Booklet, (Bangkok: ADA), 2013

²⁵ CCC, op. cit., p 13.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

NGOs in this last three decades²⁹, which continue to concentrate 70 per cent on service delivery and development plus another 7 per cent on human rights, advocacy, and genuine democracy work³⁰. As a result, there are plentiful of NGOs in Cambodia, which operate in different areas of development from advocacy organizations to service delivery organizations³¹. There were more than 5,000 NGOs and associations registered with the Ministry of Interior (MoI) in 2013³², and 555 International NGOs have signed memorandum of understandings (MoU) with Ministry of Foreign Affairs and International Cooperation (MFA-IC) in 2014³³. With this massive number of NGOs and amount of development concentration by NGOs; nonetheless, there were only 1,315 of 3,492 registered NGOs and associations in the country were active (CCC, 2013)³⁴. At the same time, there were nearly 25,000 unregistered and community-based organizations (CBOs) operating in Cambodia, according to Oxfam report in 2014³⁵.

At the same time, though civil society organizations in Cambodia have been dramatically increasing in quantity, the quality is still considered weak in general³⁶. This is because:

“in Cambodia, vast amount of professional NGOs dominate by international donors as they are the major support of financial for the establishment of those NGOs, which should not be considered as the gradual opening up of democratic space, the natural scaling up of grassroots organizations, the emergence of

²⁹ Cambodian Rehabilitation and Development Board (CRDB), Development Cooperation & partnerships Strategy 2014-2018, 2014.

³⁰ Sivhuoch Ou and Sedara Kim, Twenty Years of Cambodian Civil Society: Time for reflection, Working Paper Series No. 85, Phnom Penh: CDRI, October 2013

³¹ ADB: Civil Society Brief, Cambodia

³² <https://cisscambodia.wordpress.com/2015/08/24/enhancing-partnership-between-the-government-and-csos-toward-sustainable-development/>

³³ <http://mfaic.gov.kh/imgs/1260/NGOs.pdf>

³⁴ USAID, The 2014 CSO Sustainability Index for Asia., p 24.

³⁵ *ibid*

³⁶ Cambodia's leading independent development policy research institute, Sub-national Civil Society in Cambodia: A Gramscian Perspective, 2013, p12.

a culture of volunteerism/social activism, or the organized charity of an established middle class³⁷.”

According to Richmond and Frank (2007: 39),

“it is entirely disagreed that, in Cambodia, ‘civil society’ has existed. It appeared in the period of UNTAC’s intervention, facilitated by donor funding, according to this view ... Civil society is quite possibly an illusionary ‘virtual’ or ‘parallel’ society created by the presence and funding of the internationals, and mainly visible to international eyes. Far from aiding the development and sustainability of an indigenous civil society, it is representative of conditionality and dependency rather than local agency³⁸.”

Furthermore, according to Cooperation Committee for Cambodia (CCC 2010: 31-32),

“most accountability practices are predominantly upward ... As most NGOs are donor dependent, their decision making, not unexpectedly, [is] influenced greatly by their donors/development partners. In defining strategic focus or directions ... the priority concerns or issues of communities become secondary to donor priorities and agenda[s].³⁹”

³⁷ ADB: Civil Society Brief, Cambodia

³⁸ Sivhuoch Ou and Sedara Kim, Twenty Years of Cambodian Civil Society: Time for reflection, Working Paper Series No. 85, Phnom Penh: CDRI, October 2013

³⁹ CCC, Cooperation Committee for Cambodia (2010), *Reflections, Challenges, and Choices: 2010 Review of NGO Sector in Cambodia* (Phnom Penh: CCC)

Not difference to USAID 2014 index, because of Cambodian CSOs depend on foreign donors, it leads them to be more accountable to their donor rather than local citizen. In the same vein, as Henke's (2011: 294-295) has mentioned---

“this cadre of “donor created” NGOs... should not ... be equated with the emergence of a broader, indigenous Cambodian “civil society”...[They] are not membership organizations and have no active constituency or social base... NGOs’ dependence on international funding ... give them “strong incentives to cater to donors” programmatic priorities and reporting requirements and weak incentives to respond and account to grassroots constituencies.”

With this regard, to strengthen civil society, effort must be put on building NGOs’ capacity and an enable environment⁴⁰. Nevertheless, in practice, donors focused mainly on supporting primary professional groups of NGOs with political dominance⁴¹. Those groups of NGOs should not be considered as essentially illustrative of civil society in Cambodia as well as other developing nations, not event in the sphere of their significant numbers but also their name as social or geographical representative⁴². This only shows the weakness and sketchy evidence to justify this view of the donor community that this ongoing expanding in number of NGOs contribute to the capacity development of grassroots or civil base organization organizations, which therefore contribute to a vibrant rural civil society⁴³.

⁴⁰ Sivhuoch Ou and Sedara Kim, Twenty Years of Cambodian Civil Society: Time for reflection, Working Paper Series No. 85, Phnom Penh: CDRI, October 2013

⁴¹ *ibid*

⁴² *ibid*

⁴³ *ibid*

With this current state of NGOs, then Cambodian civil society needs a lot of key mechanism to improve their performances and activities if it would like to keep their profiles as a key development partner in Cambodian society. To strengthen this role as well as prevent the above-mentioned problems to become the obstacle for future growth and development, in August 2015, the Government has passed the “Law on Associations and Non-Governmental Organizations”, aimed to empower as well as to strengthen CSOs in Cambodia. The scope of the law does not include every CSOs, which are working in Cambodia, but only those in the name of associations and non-governmental organizations ⁴⁴ (excluding all CBOs and other small group of organizations like grassroots). The promulgation of the LANGO has attracted many attentions from both domestic and international society. There are concerns, which were raised by CSOs over this newly promulgated law as it could restrict legitimate activities as well as weaken their critical functions in which civil society organizations have contributed in these past decades; they challenged the Royal Government of Cambodia to hold in abeyance this law (CSOs joint statement, June 2015). The concern holds true among CSOs and also international communities. As articulated in the letter of Forum-Asia issued to UN Human Right High Council on the 32nd regular session in June 2016, at the Forum raised the pressing concern about the law, as it would restrict on the activities of civil society. Such concern still persists, despite the fact that the law is successfully promulgated. However, though there are expected negative outcome by CSOs, this law has the crucial role in shaping their legitimacy, institutionalizing the core value associated with NGOs and strengthening their upwards (to donors) and

⁴⁴ - A domestic association refers to a membership organization created under Cambodian law by natural persons and/or legal persons with the purposes of representing and protecting the interests of its members without making profits or gain for mutual distribution.

- A domestic non-governmental organization refers to a membership non-governmental organization, including foundations, created under Cambodian law by natural persons and/or legal persons with the purposes of providing funds or services in one or many realms in order to serve the public interest without making profits or gain for mutual distribution.

- A foreign association or non-governmental organization refers to a legitimate organization created outside the country with the purpose of conducting activities to serve the public interest without making a profit.

downwards (to clients) accountability while integrating their roles to be an indispensable development partners, which will be comprehensively explained below.

Chapter V

The Law on Associations and Non-Governmental Organizations (LANGO)

It cannot be denied that this succeed of transforming a war-torn society into a vibrant, peaceful, and developing one would not be done without the strong collaboration between the government of Cambodia and civil society. Though these two essential actors have not always had the same perspective and ideas, they are still continuing their constructive consultations for possible win-win cooperation. The penultimate draft of the LANGO has some sort of soured this relationship between civil society groups and even putting it in a very uncomfortable condition in which this legislation could strictly hindering their rights for expression and possibly minimizing their role to protect and present those marginalized people, such as the farmers, land activists, labor unionists, students, hospitality and entertainment workers as well as handicapped people. In hindsight, it is but challenging to hypothesize whether such perceptions are real or imagined or whether they would distort hidden agendas of concerned parties under the mantle of fundamental human rights. However, one thing is certain that the achievement in development of Cambodia in both economic as well as social development in these past decades up until recently would not be possible if the political opportunities and challenges to freely organize and express opinions had been repressed. Hence, the promulgation of the LANGO will not contribute to the best interest of the national government but likewise Cambodian civil society groups. Cooperation Committee of Cambodia (CCC), which is a CSO umbrella organization in Cambodia, has played a very critical role in this issue. It has engaged CSOs and other variety stakeholder to support the LANGO⁴⁵. Though, there were many different opinions between CSOs and government, they expect the same interest to continue to

⁴⁵ Cooperation Committee for Cambodia, Law on Associations and Non-Governmental Organization
<<http://www.ccc-cambodia.org/index.php/lango>>

developing Cambodia, thus, this new NGO law empowers them to be more comprehensive in any activities.

The enactment of the LANGO is supposedly appreciated to be a welcome legislative development in Cambodia whose freedom of expression and association are provided by the government in practice and protected by the Constitution. As there was no any specific law, which provides lawful protection to CSOs in Cambodia though they have registered with the Ministry of Interior (MoI) or made a memorandum of understanding (MoU) with the Ministry of Foreign Affairs and International Cooperation (MFA-IC), this LANGO will play as a safeguard for every CSOs in Cambodia with full protection. In the past, the registration and/or making MoU for all local and foreign NGOs and associations was only to recognize temporary activities of those associations and NGOs, while they were waiting for legalization. This kind of MoU or registration was not to give them a legal status as legal entities. However, with this newly promulgated LANGO, every domestic or foreign associations and NGOs who have registered and/or signed MoU, they shall become a “legal entity”. This law will protect their legitimate interest as a legal entity in Cambodia and also safeguard public welfare while strengthening partnerships and collaboration between NGOs and associations and public authorities.

Before the LANGO was promulgated on August 2015, it had been drafted for a very long period of time since 1995. The Ministry of Interior (MoI), which was the main co-founder of the law⁴⁶, had started by co-operating with legal experts from the office of United Nations High Commissioner for Human Rights in Cambodia that resulted with the draft law containing 10 chapters and 35 articles, and had submitted to

⁴⁶ In the law making process of Cambodia, a ministry, that want to sponsor a bill must first submit the Request for Legislation (RFL) to the Council of Ministers to approve. When a bill is approved by the Council of Ministers, a bill must go to the National Assembly. After the approval by the National Assembly, it needs the final review by the Senate. If there is no any constitutional infirmity, a bill goes to the King to sign for promulgation.

the Council of Minister for the first time in 1998⁴⁷. The draft law had been adjusted to the concerns of all local and foreign NGOs and associations at the MoI and the Council of Minister for almost 16 years until the national government released for public feedbacking a very first draft of LANGO, which the civil society as a whole including international and domestic NGOs in particular have articulated serious concerns about the proposed legislation, in December 2010⁴⁸.

The law had been through several discussions with its stakeholders before it come into force. Notably, from December 2010 to December 2012, the Royal Government of Cambodia issued four successive draft LANGOs. On December 15, 2010, the MoI unleashed the very first draft of LANGO together with an invitation to many NGOs to attend a national consultation, which had received many comments and recommendations. The national consultation consisted of many stakeholders from domestic and international associations and NGOs to international donors. Soon after the adjustment, the second national consultation was held on January 10, 2011, for the second draft of the LANGO. The third draft, which was released to the public on July 29, 2011, did not change considerably from the previous draft, which was still considered as a restrictive legislation, which would curtail the freedom of expression and assembly in this democratic society while allowing enormous authority to the government to govern civil society organizations in the country. Gradually, the fourth draft LANGO, which has made a significant refinement to the third draft, has made itself for another national consultation on December 12, 2011. Right after, on December 19, the national consultation was held on the draft. Yet this draft law was still subject to criticism and controversies, which caused this fourth draft to delay following a successful advocacy campaign.

⁴⁷ The Phnom Penh Post, NGO draft law ‘draconian’ < <http://www.phnompenhpost.com/national/ngo-draft-law-draconian>>

⁴⁸ NGO Law Monitor: Cambodia, as electronically culled, updated on April 3, 2015, P.8.

Likewise, foreign governments demonstrated serious interest that the present LANGO would substantially augment the government's regulations on both local civil society as well as foreign NGOs operating in the country. In September 2011, the UN Special Rapporteur on Cambodia Surya P. Subedi had critically criticized the draft law and asked the government to put more effort to refine the draft law to be more acceptable as the current draft law may hinder the legitimate roles of civil society in Cambodia and should not proceed that draft law with its present form⁴⁹. Following the report made by the United Nations Special Rapporteur, on December 2011, the U.S. government also had critical concern through a spokesperson in Washington, D. C., which had pinpointed ---

“serious concerns about the law as drafted and strongly opposes the enactment of any law that would constrain the legitimate activities of NGOs...urged the Royal Government of Cambodia to consult closely with NGOs and other stakeholders on the substance of the draft law, and to consider whether such a measure is even necessary.... The United States believes that a strong and free civil society is vital to strengthening democratic institutions, enhancing economic and humanitarian well-being, and promoting a sustainable economy⁵⁰.”

Apparently, over this several years, the draft legislation has been adjusted by the government to the concerns of its stakeholders in several manner, including the right of appeal of adverse registration decisions and to exclude smaller NGOs, known as community-based organizations (CBOs) and short-term international NGOs from coverage⁵¹. Indeed, the draft legislation is still a predicament for many civil society organizations so that scheduled consultations continued until a consensus was to be

⁴⁹Sithi: UN Special Rapporteur on Cambodia urges authorities to stop the current draft NGO law

⁵⁰U.S.-Washington D.C. Spokesman, A Question on NGO Limits in Cambodia, as culled from Daily Press Briefing, Shared on Facebook, January 7, 2011.

⁵¹LANGO, loc.cit., p.9.

achieved. The main concerns are in the registration procedure, which remains compulsory for all domestic and international associations and NGOs despite repeated challenges. Civil society organizations urge the Government to put this registration be voluntary as they have claimed that this mandatory registration would undermine the legitimate activities and the right to freedom of association which is guaranteed by the Cambodian constitution and also against the Article 22 of the International Covenant on Civil and Political Right. More than this is about the registration requirements, which remain onerous and bureaucratic process. The registration requires numerous documents including bank information, a detail governing status outlining, sources of resources and properties and rules for their management according to the Article 6, 7, 8, 9 and 10 for domestic associations and NGOs and Article 13, 15 and 17 for foreign associations and NGOs of the LANGO. In addition, if domestic NGOs who wish to operate their activities outside the region or province as registered, they need to inform the local authority five days in advance. The other problem is on the reporting procedure, which required them to report about their activities on annual basis to numerous ministries such as the Ministry of Interior and the Ministry of Economic and Finance (MoEF) for domestic associations and NGOs, and the Ministry of Foreign Affairs and International Cooperation (MFA-IC), the Ministry of Economic and Finance and Council for the Development of Cambodia (CDC) for foreign associations and NGOs. The last concern are on the arbitrary decision-making to suspend, dissolve and terminates of a Memorandum of Understanding (MoU) of foreign associations and NGOs by the MFA-IC and remove registration of domestic associations and NGOs by the MoI if these ministries found out those associations or NGOs violate the principle of “neutrality” toward political parties and/or jeopardize public security of the country in which CSOs claim that these terms are ambiguous to understand. In other words, the latest draft of legislation provide authority to the government to oppose registration of organizations of its choosing, compel groups to provide notice to the state of their activities and implement laws criminalizing defamation, disinformation and incitement.

In response to these concerns of CSOs, this LANGO has been drafted by looking to many similar laws on NGOs, which has been applying by many countries around the world, particularly in East Asia, South-East Asia and even the United States of America. The main different is only on the name of the law itself, but the purpose and regulation are mostly similar. By comparing to the “Law to Promote Specified Nonprofit Activities (NPO)” in Japan which was promulgated on March 25, 1998, on the Article 2 of the Chapter I has mentioned that “the activities of a nonprofit organization are not for the purpose of promoting, supporting, or opposing a political principle; the activities are not for the purpose of recommending, supporting, or opposing a candidate (including a prospective candidate) for a public office, a person holding a public office, or a political party”⁵². This Article 2 of the Law to Promote Specified Nonprofit Activities has shown a very similarity to the Article 24 of LANGO, which mention, “Domestic non-governmental organizations, foreign non-governmental organizations or foreign associations shall maintain their neutrality towards political parties in the Kingdom of Cambodia”. In addition, on the Article 7 of Chapter II of this NPO law also has made a clear regulation on registration that “those identified nonprofit organization who wish to operate in the country have to register as specify by the cabinet order”⁵³. Beside this, if we look to the “Nonprofit Act”, which promulgated on December 31, 1975, of the Republic of Korea, NGO needs to seek approval from a relevant ministry for their establishment. In addition, annual reports on finances as well as activities also need to be submitted to relevant ministries⁵⁴. In Indonesia, if a foundation or NGO wish to establish, they needs to seek approval from the Ministry of Justice and Human Rights according to the “Law Concerning Foundations” which was passed by the Indonesian Parliament in 2011; they are also required to submit their annual report⁵⁵. Not different to other countries, a foreign agent who wishes to establish

⁵² The Law to Promote Specified Nonprofit Activities

⁵³ *Ibid*

⁵⁴ Karla W. Simon, NGO regulation in East and South-East Asia: a comparative perspective,. Catholic University of America, <<http://asialaw.tripod.com/articles/ngo.html>>.

⁵⁵ *ibid*

in the United State of America has to register, according to the subchapter II of the Foreign Agents Registration Act (FARA), which have enacted since 1938⁵⁶.

With all these efforts which were taken by the government to make the LANGO to be not just the enable law to empowering CSO as a whole but also legitimize their activities as a development partner, eventually, on June 05, 2015, the Royal Government of Cambodia's Council of Ministers discussed extensively the fifth draft of LANGO, which was adopted by Cambodia's National Assembly on July 13, 2015 after the proposed legislation has been dormant for the past few years⁵⁷. All sixty three (63) Members of the Parliament belonging to the ruling political party, the Cambodian People's Party (CPP), who held the majority of the one hundred twenty three (123)-seat National Assembly voted in favor of passing the LANGO⁵⁸. On July 24, 2015, it was similarly adopted by the Senate for intensive perusal prior to being finally signed by Cambodia's King Norodom Sihamoni for promulgation⁵⁹. In short, the passage and promulgation of the national legislation were in conformity with the mandate of the Kingdom of Cambodia's Constitution and legislative processes in formulating a bill into law. In its entirety, the LANGO is comprised of nine (9) Chapters and thirty nine (39) Articles and, thus, its contents make the law relatively concise, foremost outlining a dual regulatory arm for domestic and international civil society groups under the respective ageist of the Ministries of Interior and Ministry of Foreign Affairs and International Cooperation (MFA-IC), with additional regulatory and oversight authority resting with other government ministries and agencies⁶⁰.

⁵⁶ Foreign Agent Registrations Act (FARA)

⁵⁷ Cambodia Center for Human Rights, CCHR LANGO's 5th Draft Analysis, (Phnom Penh: CCHR), June 2015, p 1, as electronically culled.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ LANGO, loc. cit., p 1- 10

Chapter VI

Enhancing Accountability and Good Governance

NGO Accountability is one of the most discussing topics to accompany the rise of civil society in these recent years. This concern in NGO's accountability has rise dramatically in this past few decades, because of a number of greatly circulated scandals, which have destroyed the public trust in nonprofit corporations, accompanied by dramatically increase in numbers of NGOs throughout the world⁶¹. As Bendell (2006, p15) has described---

“corrupt or self-interested use of non-governmental not-for-profit forms of organization does exist around the world and threatens to undermine support for voluntary activities. In countries newly independent of the Soviet Union, and in Russia, NGOs are often perceived as covers for organized crime; in Bangladesh and Pakistan, NGOs are sometimes seen as fronts for fundamentalist causes, and in Central Asia, they can serve as platforms for failed politicians. Consequently, the growth in NGOs should not be assumed to mean a growth in support for or positive contributions by NGOs.”

The idea in which people and organizations should be hold accountable to their works is sweeping around the world; however, it is noteworthy that the understanding of the term is more limited than its use. There are varieties of meaning of accountability have been used around the world. According to the Merriam-Webster dictionary, accountability is the quality or state of being accountable; especially: an

⁶¹ Alnoor Ebrahim, *Accountability In Practice: Mechanisms for NGOs*, World Development Vol. 31, No. 5, Great Britain: Elsevier Science Ltd, 2003, p. 1

obligation or willingness to accept responsibility or to account for one's actions⁶². Edwards and Hulme (1996, P. 967) define it as "the mean by which individuals and organizations report to a recognized authority (or authorities) and are held responsible for their own actions." In the same vein, Fox and Brown (1998, p. 12) describes accountability as "the process of holding actors responsible for actions." In addition, Cornwall, Lucas, and Pasteur (2000, p. 3) suggest that accountability is both about being "held responsible" by others and about "taking responsibility" for oneself. With all these different definitions of accountability, which are defined by scholars, it apparently shows that accountability is a complex and dynamic concept. It might be defined not only as a means through which individuals and organizations are held responsible for their actions (e.g., through legal obligations and explicit reporting and disclosure requirements), but also as a means by which organizations and individuals take internal responsibility for shaping their organizational mission and values, for opening themselves to public or external scrutiny, and for assessing performance in relation to goals⁶³.

This rise in questions of accountability is not in doubt. As the responsibility of delivering public goods and services has moved dramatically from governments to NGOs, the issue of responsibility to the public also shifts to NGO, instead of the state. According to the World Bank (2005, p3) notes, "as the influence of NGOs continues to grow, they are also attracting greater public scrutiny, prompting calls for greater accountability"⁶⁴. As accountability is the key issue for NGOs in delivering their goods and services, a key question should be asked how could we improve and ensure their accountability? According to Jane (2007: 24), there are three broad mechanisms, which have been employed by various actors including NGOs themselves to act more responsibly for their governance and actions. First is the civic mechanism, which

⁶² Jem Bendell, *Debating NGO Accountability*, UN Non-Governmental Liaison (NGLS), 2006, p. 1

⁶³ Alnoor Ebrahim, *Accountability In Practice: Mechanisms for NGOs*, World Development Vol. 31, No. 5, Great Britain: Elsevier Science Ltd, 2003, p. 3

⁶⁴ Jem Bendell, *Debating NGO Accountability*, UN Non-Governmental Liaison (NGLS), 2006, p. 1

mainly focus on the involvement of outsiders as like other NGO umbrella organizations to watch over the performances of NGOs. Second is voluntary mechanism (self-regulatory). This mechanism puts the responsibility on NGOs themselves to check and regulate their own accountability base on their policies. In Cambodia, “civic mechanism” and “voluntary mechanism” have been practicing by a small well-organized group of NGOs. The Cooperation Committee for Cambodia (CCC), which is known as one of the two most important NGOs umbrella organizations who responsible as both NGO network between the government and watch-dog for self-regulatory mechanism, is playing its most important role in utilizing both domestic and foreign NGOs or we can say the CSOs as a whole to responsibly, collectively, and accountably operate their goals and objectives more effectively to boost development process in Cambodia⁶⁵. The last and also the most important mechanism to hold NGOs to be more accountable is the legal (regulatory) mechanism. Beside the two mechanisms above, the rest of this paper is going to focus on this “legal mechanism” which is considered to be the most successive and comprehensive mechanism has been done so far to improve as well as ensure NGOs accountability. There are 5 keys legal and regulatory mechanisms in the “legal or regulatory mechanism” such as establishment and registration procedures, civil society organization’s basic legal standing, tax treatment, disclosure and public reporting requirements, and capital, asset and/or membership requirements⁶⁶. With the newly promulgated law on associations and non-governmental organizations (LANGO), several key mechanisms in this “legal or regulatory mechanism”, which are also the key articles in the LANGO, have been applying by the Royal Government of

⁶⁵ Since 2004, CCC has initiated the first mechanism in Cambodia for establishing a set of minimum standards in practice and behavior of NGOs, which is called “The NGOs Good Practice Project (GPP)”. The NGOs Good Practice Project (GPP) is a Voluntary Certificate system for NGOs, which put more attention on NGO accountability and good governance, and have applied this certificate since 2008. As of 2014, there were only 40-50 NGOs certified by CCC.

⁶⁶ Jane Nelson, The operation of Non-Governmental Organizations (NGOs) in a World of Corporate and Other Codes of Conduct, working paper for Corporate Social Responsibility Initiative No. 34, John F. Kennedy School of Government, Harvard University, 2007, p. 23

Cambodia to hold CSOs to account as well as enable them to continue delivering their goods and services for the development of Cambodia. Though the LANGO, which the scope of its regulation covers only on NGOs and associations, using the term CSOs here in this context is to apparently show that the implementation of the LANGO would indirectly contribute to the flourish CSOs as a whole. As H.E. Nut Sa An, Secretary of State for the Ministry of Interior, pinpointed on February 2011---

“NGOs need to be protected and preserved as you expressed. Subsequently the rule of law is the necessity for Cambodia to ensure the activities of the national and international NGOs to be protected from the unnecessary activities that may hamper their objectivity.”

This is the mutual benefit gained between the government and the association and non-governmental organization of Cambodia to incorporate in making this LANGO to be a successful law. Though there is the possibility for disagreement over this legislation, it is necessary for the government to regulate the activities of the organizations and to work in partnership and coordination with the government because this legislation is very important as it can act as a catalyst to spark and focus debate on the role of NGOs, the extent to which they legitimately represent civil society, to whom they are accountable and how they can be protected. This regulation activity by the government will be assisted by networking, cooperation and collaboration with civil society groups, which expected to be hand in hand with the government for total development relative to the need for transparency and improvement of project implementation. Overall, the positive outcome of the LANGO is to enhance more project stability, effectiveness and impact.

a. Registration and Establishment

In order to gain legal status as well as be able to implement their project in Cambodia, NGOs and associations have to register. There was no specific regulation on the registration and establishment of NGOs or associations in Cambodia before the promulgation of the LANGO. The registration per se was voluntarily built by NGOs or associations. This meant that if those NGOs or associations did not register with the concerned ministries, they were still allowed to operate in Cambodia. However, according to Articles 6 and 12 of the LANGO, all NGOs and associations who wish to operate in Cambodia have to register with in-charged ministries⁶⁷. Domestic associations and non-governmental organizations, shall be registered with the Ministry of Interior (MoI), while foreign associations and non-governmental organizations, with the Ministry of Foreign Affairs and International Cooperation (MFA-IC) by forging a Memorandum of Understanding (MoU). To be eligible for registration, the statute of the domestic association or non-governmental organization has to be content specific on goal and purpose and the sources of resources and properties as this statute has to be provided as a document for registration in accordance to the Article 7⁶⁸. With the clear purpose and goal which need to identify in order to be able to register as a legal entity, it provide the ability for the government to discuss as well as well supervise that domestic association or NGO as a partnership for development to achieve that purpose and goal. This concrete purpose and goal will also play as a fundamental encouragement to strengthen their activities to be more effective to archive this purpose and goal.

Likewise, the foreign non-governmental organization or association has to furnish a supporting letter for their projects from the line ministry, which it is collaborating, according to Article 13. This supporting letter of the project from the line ministry is very important to ensure that project is really exist; meanwhile, a letter

⁶⁷ LANGO loc, cit., p6-7.

⁶⁸ *ibid*

certifying the budget for implementation, which need to be certified by their headquarter in their original country, must also need to be submitted for registration. This process is to ensure long-term project sustainability and stability. The MoU, which every foreign association and non-governmental organization has to sign before implementing any program or project activities, has to be in commence with the mandate that, “every foreign non-governmental organization or association that deceive to work in Cambodia has to operate solely in the interest of public well-being and social welfare by not operate any activities outside the humanitarian”. Hence, with this thrust, every foreign association or non-governmental has to have vision, mission and goal via-a-via programs or projects to be implemented before it is duly processed for registration.

Without such registration, NGOs are not tolerated to operate any activities. In case, they still operate by violating the registration, they may hold responsibility under this law of associations and non-governmental organizations. However, request for registration may be rejected if the concerned ministries discover that goal and purpose of the NGOs and associations would jeopardize the stability, public order, and security or endanger the country’s national unity, security, unity, tradition, culture, customs and traditions. And if this situation occurs, they can use the right to appeal to the court against the decision of the involved ministry. The MoU by the Ministry of Foreign Affair and International Cooperation has validity period for a maximum of three (03) years depending on the projects of foreign NGOs or associations and which could be extended after the expiry date for another term.

b. Financial Regulation and Accountability

In Cambodia, there seems no restriction on foreign aid. Development assistance disbursements have roughly remained stable over the last four years (2011-2014), which were approximately USD 1.45 billion in 2014 equivalent to about 10% of GDP,

while more than USD 200 million were distributed to NGOs, which remained stable in this last four years (2011-2014), According to the Cambodia Effective Development Cooperation and Partnership Report 2015.

With the huge amount of financial and logistic resources, which NGOs operate, effective monitoring mechanism on their activities should be undertaken. To tackle this issue, the sources of resources and properties of the domestic NGOs or associations have to mention in their statutes, according to the Article 7. More than these, those documents for registration have to be submitted a long with the rule for managing resources and properties as well as the rule for disposing and dissolving properties and resources as dissolutions mechanism in their organization (Table 1). With these kinds of regulations, NGOs and associations themselves will be feel comfortable in implement their project without any miscalculation in the middle of project implementation. As long as they know their budget and source of funding and how they spend it, the project will be secure to complete. In addition, the problem of accountability in spending their resources will be solved with these regulations, as there exist rules and regulations for themselves in their organizations.

According to Article 10, every local non-governmental organization or association that intends to operate in Cambodia has to submit their operating bank accounts in Cambodia to the Ministry of Interior and the Ministry of Economy and Finance within thirty (30) days from the date of registration. In case of change of bank account information, they have to notify in writing within fifteen (15) days at the latest from the date of change. Likewise, to the foreign association and non-governmental organization, they have to submit their financial accounts from a bank in Cambodia to the Ministry of Foreign Affairs and International Cooperation and the Ministry of Economy and Finance within thirty (30) days from the date when the Memorandum of

Understanding is approved, according to Article 17⁶⁹. More than this, they have to submit the annual report of their activities to the respective ministries. Because of the generalized and social nature of many CSO projects, it is rather difficult to quantify the effects or outcomes of these efforts, as there exists no single goal or indicator, which determines the effectiveness of a CSO's activities. However, according to Prof. Dr. F.B. Tabayoyong, Jr., who has overseen the implementation of huge health development (contracting of public health services) project in a northeastern province of Cambodia from 2004 to 2007, which was generously funded by the Asian Development Bank (ADB), the best way to judge a project's effectiveness is often through periodic monitoring and reporting as well as through rigorous impact evaluations to measure the effects of a project on beneficiaries over time⁷⁰. Though, this report mechanism alone will not be enough to ensure the accountability of foreign NGOs or associations if there exists no direct validation on the field, according to Mr. Vei Channarith⁷¹.

c. CSOs's Political Non-Partisanship

The LANGO's Article 24 stipulates that domestic and foreign NGOs or foreign associations shall maintain their neutrality towards political parties in the Kingdom of Cambodia⁷². The Cambodian NGO Support Network (CNSN), an informal network of donor, capacity-building, training and technical assistance agencies, supporting Cambodian NGOs, used the term political neutrality in 1998 to refer to the stance of NGOs to "be in the middle and not take sides."⁷³ This means that being neutral is placing the organization in the middle and not bending to one party more than another.

⁶⁹ LANGO loc. cit., p8.

⁷⁰ Interview with Prof. Dr. Fil B. Tabayoyong, Jr. Pannasastra University of Cambodia, Faculty of Social Sciences and International Relations, Phnom Penh, Cambodia, 10 August, 2016.

⁷¹ Interview with Mr. Vei Channarith, deputy bureau chief of International Organization Department, Ministry of Foreign Affairs and International Cooperation, 13 August 2016.

⁷² LANGO loc. cit., p 6.

⁷³ Ana Maria Clamor, *Non-Partisanship: A curriculum for NGOs*, (Phnom Penh: Pact Cambodia), 2001, p 1.

In broader sense, however, political neutrality means not belonging to any one party and taking any political party's side over another one⁷⁴.

However, the truth of the matter is that when CSOs do the work of advocacy and lobbying, they inevitably get involved in political processes and activities especially when they try to influence policy formulation and governance. Nowadays, the proper term used is "political non-partisanship" which basically refers to NGO's non-involvement, non-affiliation as well as non-support for a political party⁷⁵. Non-partisanship, however, does preclude involvement in political processes and activities, such as policy advocacy, legislative lobbying, peaceful demonstrations and marches, filing of petitions to authorities, and issuing statement on specific issues or concerns. Simply, it means independence from political parties⁷⁶. The Cambodian Constitution upholds Khmer citizens' right to actively participate in the political, economic, social and cultural life of the nation. Likewise, it upholds citizens' right to express themselves and form CSOs or political parties. However, the right to establish organizations is subject to the LANGO.

d. Dissolution and Suspension

According to Article 30,32,33, for those CSOs or non-governmental organizations that fail to comply the requirements, the Ministry of Interior shall issue a written warning by giving only 30 working days at the latest and MoI shall issue the other non-verbal warning to temporarily suspend activities for a period of 90 day at the latest. Moreover, in case of habitual non-compliance, the Ministry of Interior shall issue a written decision to remove it from the register. Based on article 32, paragraph 1

⁷⁴*Ibid.*, p 3

⁷⁵*Ibid.*

⁷⁶*Ibid.*

“ shall also be applied against any domestic association or non-governmental organization that is delisted or whose activity is suspended by the Ministry of Interior but continues to carry on activities in the Kingdom of Cambodia”.

The purpose of this Article is to provide the safety and convenience of the government to regulate their activities. The suspension determines how CSOs behave in accordance with the legislation and the responsibility to run the projects, otherwise the government is constrained to maintain development in the country. Moreover, the government can provide technical advice or assistance on the right direction of platforms to pursue or complete the project sustainably.

Chapter VII

Conclusion and Recommendations

A flourishing civil society can be achieved by enjoying the the commitment and freedom of individuals pursuing their own chosen ends⁷⁷, while this type of civil society can be possible by enabling the role of law as it has the most influence to define freedom and commitment. It can be stated that an encouraging legal environment enhances civil society while a restrictive one endangers it. Likewise, the law on associations and non-governmental organizations (LANGO) is a key mechanism for harnessing good governance of NGOs, associations, and civil society in Cambodia as a whole, while facilitating their roles to be more effective in partnership for improving service delivery in Cambodia. To attain this fundamental individual right, such as freedom of speech, firstly they have to acquire formal “legal personality” that will be fully provided them after they have completed the registration process as mentioned in Articles 6 and 12 of the LANGO. The law not only provides every association and NGO this “legal personality”, but also other benefits, such as tax exemption.

This law has also come at a time when the world has put more focus on the governance issue of NGOs as they have gained increasingly significant role in society, by just not becoming providers of essential services, but also as trusted advocates for marginalized people. During the last three years, almost 4,000 projects, covering over 23 provinces, including Phnom Penh Capital City, among 25 provinces of Cambodia’s territory have been implemented⁷⁸. Significantly, roughly 1.3 million people in Cambodia for the same period benefited from these projects which, however, is under 10 per cent of the entire population and is considered to be an important figure for a

⁷⁷ CleanGovBiz: integrity in practice, Civil society empowerment (draft), oecd, 2013, p5.

⁷⁸CCC, op. cit., p 63

relatively dynamic civil society sector which basically contributes too to the economy⁷⁹.

Nevertheless, with this potent responsibility and influence, questions also have been raised to pressure on NGOs to improve their accountability and effectiveness. In Cambodia, effective voluntary mechanism or self-regulatory have been practicing by a huge majority of CSOs with CCC as the watchdog. Nearly all CSOs have document guidelines, describing CSOs' governance functions, to include resource mobilization schemes. The LANGO strengthens further these governance responsibilities, seeing to it that resources are utilized as rationalized in strategic and annual operating plans. Furthermore, in this regard, CSOs are urged to have central governing structure to increase oversight and the publication of required reports, project and financial accountabilities, and detailing the management of the CSOs on annual basis. In general, it can be safely argued that the civil society sector in Cambodia has been doing very well in the development of self-government mechanism⁸⁰. Given the trends in both the international development community and the initiatives commencing from the national level, it is expected that with the LANGO these governance measures will continue to augment and improve in the forthcoming years.

Evidently, there also exists alarming concern on the law's progress and effective implementation. It should not be forget that "a enabling legal environment produces a vibrant civil society while a restrictive one hampers the engagement process of civil society organizations in development process of the country". There are still existing concerns that the law could be used as a political tool to shut down or suspend any NGOs or associations, which found violation of "political neutrality" requirement. More than this, the law should not also be used in another form to prevent foreign NGOs that support human right and democracy to sign or extend MoU. Additionally,

⁷⁹*Ibid.*

⁸⁰Interview with Prof. Dr. Fil B. Tabayoyong, Jr., 10 August, 2016.

in the beginning of 2016, there were several civil society leaders as well as prominent opposition politicians were arrested. Four current and one former staff member of the NGO called ADHOC⁸¹ were arrested and charged with bribing witness under Article 548 of the Criminal Code, stemming from ADHOC's legal representative of an alleged mistress of a leading opposition politician⁸². Therefore, while legislation does exert contain pressure to assure and ensure accountability of NGOs, it also require on the government's accountability and capability to assure the implementation of the law while ensuring harmonious relations among CSOs in the country. In other word, they both have to hold accountability to one another for mutual advantage and synergy.

To add, the CSOs in Cambodia with the LANGO in-place envision to realize the following:

- The government to come out with simplified methodological procedure as well as system in-place relative to the registration of all foreign and domestic NGOs and associations operating in the country
- Establishment of a consolidated friendly-user management information system (MIS) base scheme for every registered NGO and association for convenient sharing of information as well as for judicious decision-making process when warranted
- For both the Ministries of Foreign Affairs and International Cooperation and the Ministry of Interior to work out intricate with the Ministry of Justice details by clearly defining specific offenses that are considered criminal in nature that are strictly not tolerated to be engaged as operational activities by associations and NGOs rather than the broad

⁸¹ ADHOC is the Cambodian human rights and development association.

⁸² The International Center for Not-for-Profit- Law,
<<http://www.icnl.org/research/monitor/cambodia.html>>

categorization of terrorism and money-laundering. Quite importantly, the Royal Government of Cambodia's Ministry of Justice should provide CSOs the important relevant national guideline for such heinous crimes as well as to conduct general orientations to CSOs' networks relative to the noble initiative.

- For both the national government and the CSOs to institutionalize guidelines which would thresh out and address the core issues of political neutrality, non-partisanship, political activism as well as what would be considered as political violence within the Cambodian society context and cultural norms.
- For the national government and the political leadership to ensure that the United Nations Declaration of Human Rights is adhered to, reaffirming that the prime responsibility and duty to promote human rights and fundamental freedom lies within the state. Also, it has to be firmly impressed on the CSOs that in the exercise of the universal right is also the corresponding responsibilities by associations and NGOs in the assertion of the Declaration.
- A mechanism should be operationalized by the government in consultation, cooperation, coordination and collaboration with CSOs that the LANGO will not be abused, especially as regards peripheral organizations, arbitrary rejection of registration as well as the invasive control powers over the activities of domestic and foreign associations and NGOs.
- Periodic top level meaningful engagements between CSOs' key leaders and decision-makers, discussion on meaningful information for both the national government and civil society groups, conducting educated debates

leading to possible constructive changes or amendments, etc. have to be harnessed, as the LANGO is being implemented in its seminal years.

- That in the implementation of the LANGO, both the state and the civil society should see to it that Cambodia's reputation as a developing economy should not be hampered, as this could potentially impact external financial support from donor countries, which currently accounts for more than 30 per cent of the national government's budget⁸³. In other words, CSOs should assist the government by not wrecking the macro-economic fundamentals of the country so that the delivery of the essential public services to the people is not accordingly handicapped.

⁸³ *Ibid.*

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요약 (국문초록)

캄보디아의 시민 사회의 정치적 중요성이 증대됨에 따라 협회 및 비정부기구 (LANGO)에 관한 최근의 공포로 인해 부정적인 영향이 옳거나 그름이 더 많을 것으로 기대된다. 그러나이 연구는 국가가 시민 사회 단체 (CSOs)에 영향을 줄뿐만 아니라 국가의 구조, 권력 및 도달 범위에 미치는 영향뿐만 아니라 시민 사회 단체 (CSOs)에 대한 국가 입법을 가능하게하는 긍정적 인 효과에 대해 깊이 파헤쳐 조사합니다. 따라서이 논문의 목적은 캄보디아에서 시민 사회의 역할에 영향을 미치는 세계적, 지역적, 국내 적 사회 경제적 및 정치적 요인들에 대한 옹호론을 충분히 평가하면서 캄보디아 시민 사회 단체들을 적극적으로 강화할 수있는 방법을 종합적으로 조사하는 것이다. 일반적으로.

실제로, 시민 사회에 대한 기존의 이해는 개념적 틀을 위해 다른 이론들이 개발됨에 따라보다 정교 해졌다. 더 중요한 것은 "시민 사회의 힘은 사회 단위의 평화적 공존과 동시에 국가에 대한 종속에 저항하고 국가의 정치 구조에 포함시키려는 공동의 능력에 의해 계량화된다"고 이론화된다.

캄보디아에서는 시민 사회가 조직 구조를 견뎌내고 지속적으로 생활하고 변화하는 형태로 보는 것이 아니라 프로세스로 더 많이 간주됩니다. LANGO 와 함께 시민 사회의 전반적인 활성화 된 역할은 주 정부에있어서 여러 가지 방식으로 긍정적 인 정치적 변화를 이끌어 내고 근본적으로 공개적이고 책임감 있고 참여적인 정치를 지향하며 협회와 비정부기구를 개념화하는 중요성을 염두에두고있다. 정치 사회와 국가의 변화를위한 강력한 힘과 지배 구조의 장이 될 것입니다.

주요어: 캄보디아 NGO 법
학번:2015-25091